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VIA FACSIMILE AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Opinion Committee
Open Government Section of the Opinion Committee
Office of the Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

60V
FILE # ML-32382-95

I.D. # 32452

RE: Open Records Decision Request
Tonie Hernandez, Volk & Montes
Jo Garcia August

RECEIVED

MAR 21 1995

Dear Committee Members:

Re: 32382

Opinion Committee

The El Paso Police Department has received two Open Records Requests relating to the same issue. One request is from Tonie Hernandez, with the law firm of Volk & Montes. The other request is from Jo Garcia August. In their requests, the requestors ask for records relating to 9-1-1 calls made from a particular address. Attached, as Exhibit "A", is a copy of the request from Ms. Hernandez. Attached, as Exhibit "B", is a copy of the request from Ms. August.

The City submits that all of the requested records are exempt from disclosure under Sections 552.101 and 552.108 of the Texas Open Records Act.

BACKGROUND INFORMATION

Both requestors seek information from the City concerning calls made to the 9-1-1 telephone number of the El Paso County Enhanced 9-1-1 Emergency Communications District from a particular address. This E 9-1-1 District was established in accordance with the provisions in Sec. 772.301, et seq., Health & Safety Code. In order to explain how the El Paso Police Department acquires access to information regarding the address of a call made to 9-1-1, it is

necessary to provide some background information as to how the E 9-1-1 system in El Paso works.

Persons in El Paso County who desire to have regular telephone service must request it from Southwestern Bell (SW Bell) in El Paso. As part of the approval process, SW Bell verifies the customer's address with the El Paso County Enhanced 9-1-1 Emergency Communications District for proper range identification for coordination with the E 9-1-1 system.

SW Bell has built a computer database containing information regarding their customers for their billing purposes. SW Bell has also sent this information to a computer at their Dallas office. The Dallas office has used the El Paso office's information to create a separate public service database in a computer located in Dallas. SW Bell uses this computer and public service database to provide address and telephone numbers to 9-1-1 systems as required by Sec. 772.318, Health & Safety Code.

When a person in El Paso County dials 9-1-1, the call goes to SW Bell in El Paso. SW Bell's equipment then routes the call and the caller's phone number to the E 9-1-1 system. The phone number goes into a computer, known as a call-stocker, which is located at the E 9-1-1 District in El Paso and is maintained by SW Bell. The call-stocker computer then presents the phone number to a telephone station operated by call-taker employed by the City of El Paso and assigned to work in the Police Department.

Simultaneously, the phone number is sent to the Dallas SW Bell computer containing the public service database. The Dallas computer uses the phone number to locate information as to the address and name of the customer and immediately sends this additional information to the call-taker station in El Paso.

Simultaneously, the information is also sent to the Computer Aided Dispatch (CAD) computer owned by the E 9-1-1 District. With the touch of a button, the City call-taker brings that information up into a field screen of a computer terminal at the call-taker station. The address and phone number information then becomes part of the information recorded in and saved in the CAD system of the E 9-1-1 District. The City of El Paso has access to the information stored in the CAD system.

When the requestors submitted their requests for 9-1-1 records, a City employee accessed the information in the CAD system and by searching the address field of the CAD computer, located and printed all records that were responsive to the requests. Attached, and marked as Exhibit "C," is a complete copy of the records that have been requested by Ms. Hernandez. Attached, and marked as Exhibit "D," is a complete copy of the records that have been requested by Ms. August. These documents are being submitted under separate cover for your review.

CONFIDENTIAL BY LAW
SECTION 552.101

The City submits that the requested records are confidential by law and not releasable under Section 552.101, Tex. Govt Code. Section 552.101 states:

Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

The City submits that the address and telephone number information maintained in the E 9-1-1 District's CAD computer is confidential by law in accordance with Sec. 772.318, Health & Safety Code. The El Paso County Enhanced 9-1-1 Emergency Communications District operates pursuant to the provisions in Sec. 772.301 et seq., Health & Safety Code. Section 772.318 states:

(a) As part of computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

(b) Information furnished under this section is confidential and is not available for public inspection.

(c) A service provide is not liable to any person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsection (a).

Thus, this provision makes the telephone numbers and the addresses associated with the numbers supplied by SW Bell to the E 9-1-1 District confidential and not available for public inspection. The City submits that because of the confidential nature of the address provided to the E 9-1-1 District and stored in the District's CAD computer, that the law also prohibits the release of all information acquired by using the address to search the CAD computer.

We have been unable to locate any opinion or ruling that is on point with the issue we are raising. There are several other situations that involve requests for confidential information that are somewhat analogous to this situation and provide some guidance. One of these situations is where a requestor provides only the name of a sexual assault victim and requests a police report of the incident. As the identity of a sexual assault victim is confidential [See, ORD No. 339 (1982)], removing the name, yet providing the report will be inadequate to protect the identity of

the victim. Releasing the record in this manner would actually confirm the identity of the victim, as the requestor already has that information. In this type of situation, the only way to adequately protect the identity of the victim is to deny the request all together.

In ORD No. 393 (1983), you held that the entire report relating to an investigation of alleged sexual abuse of a child could be withheld in its entirety. You held at p. 2:

For the reasons discussed in Open Records Decision No. 339 (9182), we conclude that the information which either identifies or would tend to identify the victim may be withheld under the common law right of privacy. We further conclude that this identifying information accounts for such a large part of the police report and is so inextricably intertwined with the remainder of this report that it would be unfeasible to attempt to separate the remainder and make it available. The nonidentifying information would, if separated, be devoid of meaning. We therefore conclude that you may deny this request in its entirety.

Another somewhat analogous situation would be that of a person who requests criminal history record information of a person. A person has a right of privacy in this information. See, ORD No. 565 (1990) and Houston Chronicle Publishing Company v. City of Houston, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 558 (Tex. 1976). Criminal history records are not releasable in their entirety because releasing some or part of the records will not adequately protect the privacy right recognized by law.

Similarly, a situation involving a request for record pertaining to an attempted suicide arose in ORD No. 422 (1984). In this opinion, a question was raised regarding the release of records concerning intentional self-inflicted wounds versus the release of accidental self-inflicted wounds. You held at p. 2, that "[w]e cannot require release of reports of accidental self-inflicted injuries without, by implication, revealing that reports of all other self-inflicted injuries demonstrate intent." (Emphasis in the original).

Consequently, the details of the nature of all self-inflicted wounds were held to be not disclosable, as that was the only way to adequately preserve the privacy rights relating to intentionally self-inflicted wounds.

The City submits that the address and telephone number information contained in the CAD records and printouts is confidential, as that information was SW Bell as required by Sec.

772.318, Health & Safety Code. At a minimum, the addresses and telephone numbers would need to be redacted from a 9-1-1 report. However, with the two requests from Ms. Hernandez and Ms. August, merely removing this information from the printout prior to the release of the printout will not adequately protect the confidential nature of the information, as the requests for the information were based only on the addresses.

Merely redacting the addresses from the records, under these circumstances, will not preserve the confidentiality of the addresses. The addresses are so intertwined with the request that they cannot be separately protected merely by their redaction from the records. The City submits that the only way that the confidentiality of the addresses can be protected when the requestor asks for 9-1-1 information based on an address is to withhold the records in their entirety.

OTHER EXEMPTIONS CLAIMED

The City additionally and separately claims that some of the requested records are exempt from disclosure under Sections 552.101 and 552.108 of the Texas Open Records Act. We will only briefly state the arguments pertaining to the most significant issues at this time, as we believe that the question as to the disclosability of all of the requested records can be completely decided based on Section 552.101. However, we would reserve the opportunity to make additional arguments as to the sections listed above, should that become necessary.

CONFIDENTIAL BY LAW SECTION 552.101

The City submits that some of the records are separately and additionally confidential by law for reasons other than the addresses and phone numbers of the caller listed in the reports. Some of the reports in Exhibit "C", submitted under separate cover, contain information that is confidential by law. These reports concern incidents such as a mentally ill person who was taken into protective custody by the police, a missing juvenile, babies left alone, and juveniles detained or arrested for shoplifting.

The records of these incidents have been marked with stick-on notes attached to Exhibit "C". The City submits that these reports are separately and additionally confidential by law and not releasable pursuant to Section 552.101.

LAW ENFORCEMENT EXCEPTION
SECTION 552.108

Lastly, to the extent that some of the records relate to pending prosecutions, the City submits that those records are separately and additionally exempt from disclosure under Section 552.108.

CONCLUSION

Based on the above, we request your assistance and a decision as to the disclosability of the records under the Texas Open Records Act. Thank you for your time and assistance with this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Elaine S. Hengen
Assistant City Attorney

Enclosures (with copy sent by mail)

cc: Al Avila, Assistant City Attorney
Denise, ID&R
Lt. Gabriel Serna, Communications
Tom Blandin, E 9-1-1 District